

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-1291**September Term, 2019****FAA-07/28/2020 Order****Filed On: August 21, 2020**

Warbird Adventures, Inc. and Thom Richard,

Petitioners

v.

Federal Aviation Administration,

Respondent

BEFORE: Henderson, Millett, and Katsas, Circuit Judges

ORDER

Upon consideration of the emergency motion for stay pending review and the supplement to the motion, the opposition thereto, and the reply, it is

ORDERED that the emergency motion for stay pending review be denied. Petitioners have not satisfied the stringent requirements for a stay pending court review. See Nken v. Holder, 556 U.S. 418, 434 (2009); D.C. Circuit Handbook of Practice and Internal Procedures 33 (2019).

Petitioners have not established a likelihood of success on the merits of their petition, because the Federal Aviation Administration's ("FAA") cease-and-desist order is consistent with the agency's 2014 interpretation of 14 C.F.R. § 91.315. See FAA Legal Interpretation from Mark Bury to Gregory Morris, 2014 WL 5319629 (Oct. 7, 2014) ("As § 91.315 does not set forth any exceptions for providing flight training for hire in a limited category aircraft, the only way to provide such training is pursuant to an exemption from this section of the regulations.").

To the extent petitioners now rely on the statement provided by an official of the FAA Flight Standards District Office in Orlando, the record before the court does not indicate that petitioners presented that argument to the FAA. See Fla. Power & Light Co. v. Lorion, 470 U.S. 729, 744 (1985) ("The [Administrative Procedure Act] specifically contemplates judicial review on the basis of the agency record compiled in the course of informal agency action in which a hearing has not occurred."). Furthermore, that argument was raised for the first time in petitioners' reply, giving the FAA no opportunity to respond, and it is therefore forfeited. See General Carbon Co. v. OSHA, 854 F.2d 1329, 1330 (D.C. Cir.

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1988) (“[The court] will not consider arguments raised for the first time in the reply.”).

Finally, petitioners have failed to demonstrate irreparable harm in light of the opportunity for them to obtain an exemption, under 14 C.F.R. part 11, from the restrictions of 14 C.F.R. § 91.315.

Per Curiam**FOR THE COURT:**

Mark J. Langer, Clerk

BY: /s/

Manuel J. Castro

Deputy Clerk